

1

STATE OF MICHIGAN

2

THE THIRD JUDICIAL CIRCUIT COURT - (WAYNE COUNTY)

3

4

PEOPLE OF THE STATE OF MICHIGAN

5

VS.

CIRCUIT COURT NO.
09-25646-01

6

ERIC ARLINGTON OGILVIE,

7

DEFENDANT.

8

_____/

9

POST-CONVICTION MOTION

10

BEFORE THE HONORABLE PATRICIA S. FRESARD, CIRCUIT JUDGE

11

DETROIT, MICHIGAN - NOVEMBER 16, 2010

12

13

APPEARANCES:

14

FOR THE PEOPLE: JON P. WOJTALA, P-49474
ASSISTANT PROSECUTING ATTORNEY
1441 ST. ANTOINE
DETROIT, MICHIGAN 48226
(313) 224-5777

15

16

17

18

FOR DEFENDANT: JAMES S. LAWRENCE, P-33664
ATTORNEY-AT-LAW
828 WEST 11 MILE ROAD
ROAYL OAK, MICHIGAN 48067
(248) 399-6930

19

20

21

22

REPORTED BY: M. ARLEN DREGER, CSR-2509
OFFICIAL COURT REPORTER
(313) 224-2455

23

24

25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

C O N T E N T S

WITNESSES: PEOPLE

NONE

WITNESSES: DEFENDANT

NONE

EXHIBITS: MARKED RCVD

NONE

1 DETROIT, MICHIGAN

2 NOVEMBER 16, 2010 9:33 A.M.

3 - - -

4 THE CLERK: FILE NUMBER 09-15646, PEOPLE
5 VERSUS ERIC OGILVIE. THE MATTER IS HERE FOR
6 POST-CONVICTION HEARING.

7 MR. LAWRENCE: GOOD MORNING. JAMES LAWRENCE
8 REPRESENTING ERIC OGILVIE, WHO IS NOT PRESENT.

9 THE COURT: ALL RIGHT.

10 MR. WOJTALA: GOOD MORNING. JOHN WOJTALA FOR
11 THE PEOPLE.

12 THE COURT: YOU MAY PROCEED.

13 MR. LAWRENCE: YOUR HONOR, WE HAVE HAD
14 DISCUSSIONS YESTERDAY, AND I BELIEVE WE HAMMERED JUST
15 ABOUT EVERYTHING OUT. I'LL GO THROUGH MY DESCRIPTION
16 AND THEN IF MR. WOJTALA HAS ANY CORRECTIONS OR
17 ADDITIONS, I'M SURE HE CAN GIVE THEM.

18 WHAT WE HAVE CONCLUDED IS THAT ONLY ONE OF
19 THE ISSUES THAT REQUIRES ANY EVIDENTIARY HEARING IS THE
20 ISSUE ON INEFFECTIVE ASSISTANCE OF COUNSEL. WE HAVE
21 AGREED THAT WE WILL STIPULATE THAT THE TRANSCRIPT OF
22 THE 911 TAPE IS A CORRECT TRANSCRIPTION.

23 OUR PLAN IS FOR THE HEARING TO CALL FOUR
24 WITNESSES, IF THAT'S ALLOWED. ONE OF THEM WOULD BE THE
25 DEFENSE COUNSEL WHO WILL BE ASKED ABOUT CERTAIN

1 DECISIONS THAT HE MADE, AND DEFENDANT OGILVIE HIMSELF.

2 WE WANT TO CALL FOR A MOMENT THE DEFENDANT

3 OGILVIE'S BROTHER FROM OUT OF STATE, WHO WOULD GIVE A

4 SHORT TESTIMONY ABOUT HOW EASY IT WAS FOR HIM, A

5 NON-LAWYER IN VIRGINIA TO GET THOSE 911 TAPES, AND THEN

6 ASSUMING THAT I CAN FIND HER, I HAVE NOT SPOKEN TO HER

7 YET, THE WOMAN WHO MADE THE 911 CALL, REBECCA SWANSON.

8 THOSE WOULD BE THE FOUR WITNESSES WE WOULD

9 PROPOSE TO CALL, AND ALL OTHER ISSUES ARE SIMPLY

10 MATTERS FOR LEGAL ARGUMENT AND DON'T REQUIRE WITNESSES.

11 THE COURT: ALL RIGHT.

12 MR. WOJTALA: THAT'S CORRECT, YOUR HONOR. I

13 ANTICIPATE IT'S PROBABLY GOING TO TAKE LESS THAN 90

14 MINUTES, IF THAT; EVEN SHORTER THAN THAT.

15 MR. LAWRENCE: I THINK THAT'S A FAIR

16 ASSESSMENT.

17 THE COURT: ALL RIGHT.

18 MR. WOJTALA: WITH THAT, YOUR HONOR, I ALSO

19 AGREE WITH THE STIPULATION AS FAR AS THE 911

20 TRANSCRIPTS OF THAT 911 TAPE. BUT WE WILL GET TO THAT

21 WHEN WE ARE AT THE ACTUAL HEARING ITSELF.

22 THE COURT: ALL RIGHT.

23 ANYTHING ELSE?

24 MR. LAWRENCE: JUST THAT BECAUSE I AM HAVING

25 A WITNESS, THE DEFENDANT'S BROTHER, COME IN FROM OUT OF

1 STATE, A COUPLE WEEKS NOTICE WOULD BE USEFUL.

2 THE COURT: ALL RIGHT. THAT'S FINE.

3 WE'LL SET DATES. BUT AS FAR AS THE OTHER
4 ISSUES THAT ARE NOT -- THAT DON'T REQUIRE HEARINGS,
5 LIKE THE ISSUE OF THE SELF-DEFENSE CLAIM, AND
6 INSTRUCTIONS GIVEN; WAS THERE GOING TO BE A RESPONSE,
7 PROSECUTOR'S RESPONSE ON THAT?

8 MR. WOJTALA: YES, YOUR HONOR.

9 NORMALLY WHAT I REQUEST IS AFTER THE HEARING,
10 ONCE WE DISCOVER THE TESTIMONY, AND NOT TO TRY TO
11 PROLONG ANYTHING -- ONCE WE ACTUALLY HAVE THE HEARING
12 AND EVIDENCE, I NORMALLY REQUEST TO FILE A WRITTEN
13 RESPONSE AT THAT POINT; ONCE WE HAVE ALL THE EVIDENCE.
14 BUT IF THE COURT PREFERS, I COULD FILE ONE PRIOR TO THE
15 ACTUAL HEARING.

16 THE COURT: WELL, ON THE ISSUES THAT DON'T
17 REQUIRE YOU TO HAVE A HEARING THAT DOESN'T TOUCH UPON
18 IT, YOU KNOW, YOU COULD RESPOND, AND THEN YOU COULD
19 RESPOND SEPARATELY AFTER THE HEARING TO ANY OF THE
20 ISSUES THAT ARE COVERED BY THE HEARING.

21 MR. WOJTALA: CERTAINLY, YOUR HONOR.

22 THE COURT: ALL RIGHT.

23 MR. LAWRENCE: THEN IT'S MY UNDERSTANDING
24 THAT WE WILL BE BACK HERE ON MONDAY, REGARDING MY
25 MOTION FOR BOND PENDING APPEAL?

1 THE COURT: ALL RIGHT.

2 COUNSEL, I ALSO WANTED TO MEET WITH YOU IN
3 CHAMBERS, BRIEFLY.

4 (BRIEF RECESS)

5 (COURT RECONVENED AT 9:38 A.M.)

6 THE CLERK: WE ARE BACK ON THE RECORD ON
7 PEOPLE VERSUS ERIC OGILVIE.

8 THE COURT: THE RECORD SHOULD REFLECT WE HAVE
9 HAD A MEETING IN CHAMBERS REGARDING THIS CASE, AND SOME
10 NEGOTIATING TO BE DONE ON THIS CASE POSSIBLY, AND ALSO
11 SOME DATES TO SET FOR HEARINGS. WE ARE GOING TO HAVE A
12 HEARING DATE SET FOR DECEMBER 6TH.

13 ALSO THE DEFENDANT, IT'S MY UNDERSTANDING,
14 THE DEFENDANT HAS BEEN WRITTEN OVER, AND HE WILL BE
15 HERE ON THE 22ND. COUNSEL MAY NEED TO SPEAK TO EACH
16 OTHER AND MAY TALK TO THE DEFENDANT. THE COURT WILL BE
17 HERE, BUT WE'LL SET THE 22ND ONLY FOR A DATE IN CASE
18 THERE IS -- IF THERE IS ANY EARLY RESOLUTION THAN YOU
19 CAN BRING IT TO THE COURT'S ATTENTION, AND WE'LL PLACE
20 IT ON THE RECORD, OTHERWISE WE WILL SEE YOU ON THE 6TH.

21 MR. LAWRENCE: THANK YOU, JUDGE.

22 MR. WOJTALA: THANK YOU.

23 THE CLERK: DO YOU WANT HIM BROUGHT OVER ON
24 THE 22ND?

25 THE COURT: YES.

1 (HEARING CONCLUDED)

2 R E P O R T E R ' S C E R T I F I C A T E

3

4

5 STATE OF MICHIGAN)
) - SS

6 COUNTY OF WAYNE)

7

8

9 I, M. ARLEN DREGER, CSR-2509, OFFICIAL COURT REPORTER IN AND
10 FOR THE THIRD JUDICIAL CIRCUIT COURT, FOR THE COUNTY OF
11 WAYNE, STATE OF MICHIGAN, DO HEREBY CERTIFY THE FOREGOING
12 TRANSCRIPT WAS REDUCED TO TYPEWRITTEN FORM BY MEANS OF
13 COMPUTER-ASSISTED TRANSCRIPTION AND COMPRISE A TRUE AND
14 ACCURATE TRANSCRIPT OF THE PROCEEDINGS TAKEN IN THE
15 ABOVE-ENTITLED MATTER.

16

17

M. ARLEN DREGER, CSR-2509
OFFICIAL COURT REPORTER

18

19

20

21 DATED:

22 TRANSCRIPTS THAT DO NOT REFLECT A SIGNATURE IN BLUE INK MAY
23 BE AN UNAUTHORIZED COPY.

24

25